

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANN ELIZABETH HOWARD, et al.,

Plaintiffs,

V.

CIVIL NO. 05-1928 (RLA)

GREGORIO FELICIANO, et al.,

Defendants.

10 ORDER IN THE MATTER OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Defendants have moved the Court to enter summary judgment dismissing various of the claims asserted in the complaint. The court having reviewed the arguments presented by the parties as well as the documents submitted therewith hereby rules as follows.

I. FACTUAL BACKGROUND

Plaintiffs are the parents of the minor ROBERT ALMODOVAR HOWARD suing on their own behalf and in representation of their son. Named defendants are GREGORIO FELICIANO, the PUERTO RICO DEPARTMENT OF EDUCATION ("DOE") through its Secretary, and the COMMONWEALTH OF PUERTO RICO ("COMMONWEALTH") through its Governor.

Plaintiffs assert claims under the Individuals with Disabilities Education Act of 1970 ("IDEA"), 20 U.S.C. § 1400, 42 U.S.C. § 1981, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and our local tort statute, Laws of P.R. Laws Ann. tit. 31 § 5141 (1990).

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3 According to the complaint, the ALMODOVARs enrolled their son in
4 seventh grade at the DOE's "20 de Septiembre de 1988" School in
5 Vieques. School officials were opportunely informed that ROBERT
6 suffered from Attention Deficit Hyperactivity Disorder and Asperger's
7 Syndrome (a high functioning form of autism) which entitled him to
8 special education program services. ROBERT had been a special
9 education student since first grade in stateside schools and had
10 adequately performed until attending FELICIANO's math class.

11 In addition to a discriminatory grading system,¹ plaintiffs
12 complain of the abusive harassment ROBERT was constantly subjected to
13 by FELICIANO due to his race and national origin to the point where
14 the parents were forced to request a restraining order because they
15 feared for his personal safety after their grievances had gone
16 unanswered by the DOE officials. Lastly, the ALMODOVARs aver they
17 were forced to take their son back to the United States to avoid
18 further damages. Plaintiffs further allege that defendants failed to
19 comply with the duties imposed by IDEA.

20 Plaintiffs seek relief for their mental suffering as well as
21 compensatory and punitive damages.

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25 ¹ According to plaintiffs, the minor was labeled by the teacher
26 as "el gringo" and because of his race and nationality was given a
"C" grade even though his test scores were "A".

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2
3 **II. PROCEDURAL BACKGROUND**
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In our Order in the Matter of Defendants' Partial Motion to Dismiss (docket No. 46) defendants' request to dismiss the IDEA claim was denied. However, relief pursuant to this statute was limited to reimbursement of appropriate expenses under IDEA.

Further, the request to dismiss the tort claim pursuant to Eleventh Amendment immunity was granted but limited to the COMMONWEALTH, the DOE and their respective principal officers in their official capacity.

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12 **III. MOTION FOR SUMMARY JUDGMENT**
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Defendants have raised the following arguments in support of their summary judgment request:

- The claims asserted under 42 U.S.C. § 1981 requesting monetary damages are barred by the Eleventh Amendment to the United States Constitution and are also time-barred.
- The claims asserted under IDEA are time-barred, or in the alternative, plaintiffs have failed to establish a cause of action because ROBERT ALMODOVAR HOWARD was never registered as a special education student nor was there ever any complaint regarding the breach of this statute to the DOE.
- The Title VI claims are time barred, or in the alternative, plaintiffs have failed to establish a cause of action under this provision since the DOE did not discriminate against ROBERT ALMODOVAR HOWARD.

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3 Rule 56(c) Fed. R. Civ. P., which sets forth the standard for
4 ruling on summary judgment motions, in pertinent part provides that
5 they shall be granted "if the pleadings, depositions, answers to
6 interrogatories, and admissions on file, together with the
7 affidavits, if any, show that there is no genuine issue as to any
8 material fact and that the moving party is entitled to a judgment as
9 a matter of law." Sands v. Ridefilm Corp., 212 F.3d 657, 660-61 (1st
10 Cir. 2000); Barreto-Rivera v. Medina-Vargas, 168 F.3d 42, 45 (1st Cir.
11 1999). The party seeking summary judgment must first demonstrate the
12 absence of a genuine issue of material fact in the record.
13 DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997). A genuine
14 issue exists if there is sufficient evidence supporting the claimed
15 factual disputes to require a trial. Morris v. Gov't Dev. Bank of
16 Puerto Rico, 27 F.3d 746, 748 (1st Cir. 1994); LeBlanc v. Great Am.
17 Ins. Co., 6 F.3d 836, 841 (1st Cir. 1993), cert. denied, 511 U.S.
18 1018, 114 S.Ct. 1398, 128 L.Ed.2d 72 (1994). A fact is material if
19 it might affect the outcome of a lawsuit under the governing law.
20 Morrissey v. Boston Five Cents Sav. Bank, 54 F.3d 27, 31 (1st Cir.
21 1995).

22 "In ruling on a motion for summary judgment, the court must view
23 'the facts in the light most favorable to the non-moving party,
24 drawing all reasonable inferences in that party's favor.'" Poulis-
25 Minott v. Smith, 388 F.3d 354, 361 (1st Cir. 2004) (citing Barbour v.
26 Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995)).

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2 Credibility issues fall outside the scope of summary judgment.

3 "Credibility determinations, the weighing of the evidence, and the

4 drawing of legitimate inferences from the facts are jury functions,

5 not those of a judge." Reeves v. Sanderson Plumbing Prods., Inc.,

6 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (citing

7 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505,

8 91 L.Ed.2d 202 (1986)). See also, Dominquez-Cruz v. Suttle Caribe,

9 Inc., 202 F.3d 424, 432 (1st Cir. 2000) ("court should not engage in

10 credibility assessments."); Simas v. First Citizens' Fed. Credit

11 Union, 170 F.3d 37, 49 (1st Cir. 1999) ("credibility determinations

12 are for the factfinder at trial, not for the court at summary

13 judgment."); Perez-Trujillo v. Volvo Car Corp., 137 F.3d 50, 54 (1st

14 Cir. 1998) (credibility issues not proper on summary judgment);

15 Molina Quintero v. Caribe G.E. Power Breakers, Inc., 234 F.Supp.2d

16 108, 113 (D.P.R. 2002). "There is no room for credibility

17 determinations, no room for the measured weighing of conflicting

18 evidence such as the trial process entails, and no room for the judge

19 to superimpose his own ideas of probability and likelihood. In fact,

20 only if the record, viewed in this manner and without regard to

21 credibility determinations, reveals no genuine issue as to any

22 material fact may the court enter summary judgment." Cruz-Baez v.

23 Negron-Irizarry, 360 F.Supp.2d 326, 332 (D.P.R. 2005) (internal

24 citations, brackets and quotation marks omitted).

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2 Lastly, motions for summary judgment must comport with the
3 provisions of Local Rule 56(c) which, in pertinent part reads:

4 A party opposing a motion for summary judgment shall submit
5 with its opposition a separate, short, and concise
6 statement of material facts. The opposing statement shall
7 admit, deny or qualify the facts by reference to each
8 numbered paragraph of the moving party's statement of
9 material facts and unless a fact is admitted, shall support
10 each denial or qualification by a record citation as
11 required by this rule.

12 This provision specifically requires that in its own statement
13 of material facts respondent either admit, deny, or qualify each of
14 movant's proffered uncontested facts and for each denied or qualified
15 statement cite the specific part of the record which supports its
16 denial or qualification. Respondent must prepare its separate
17 statement much in the same manner as when answering a complaint.

18 The purpose behind the local rule is to allow the court to
19 examine each of the movant's proposed uncontested facts and ascertain
20 whether or not there is adequate evidence to render it uncontested.
21 As clearly evinced by the following excerpt, compliance therewith is
22 paramount for the court to be able to carry out its fact-finding
23 role.

24 We repeatedly have emphasized the importance of local
25 rules similar to Local Rule 56. Such rules were inaugurated
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in response to this court's abiding concern that, without them, summary judgment practice could too easily become a game of cat-and-mouse. Such rules are designed to function as a means of focusing a district court's attention on what is - and what is not - genuinely controverted. When complied with, they serve to dispel the smokescreen behind which litigants with marginal or unwinnable cases often seek to hide [and] greatly reduce the possibility that the district court will fall victim to an ambush.

Caban Hernandez v. Philip Morris USA, Inc., 486 F.3d 1, 7 (1st Cir. 2007) (internal citations and quotation marks omitted). See also, Alsina-Ortiz v. Laboy, 400 F.3d 77, 80 (1st Cir. 2005) (“rule aims to make the parties organize the evidence rather than leaving the burden upon the district judge.”); Morales v. A.C. Orssleff's EFTF, 246 F.3d 32, 33 (1st Cir. 2001) (summary judgment should not “impose [upon the court] the daunting burden of seeking a needle in a haystack”); see also, Leon v. Sanchez-Bermudez, 332 F. Supp.2d 407, 415 (D.P.R. 2004).

Apart from the fact that Rule 56(e) itself provides that "[f]acts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted" in discussing Local Rule 311.12, its predecessor, the First Circuit Court of Appeals has stressed the importance of compliance by stating that the parties who ignore its strictures run the risk of the court deeming

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2 the facts presented in the movant's statement of fact admitted.
3 "Given the vital purpose that such rules serve, litigants ignore them
4 at their peril. In the event that a party opposing summary judgment
5 failed to act in accordance with the rigors that such a rule imposes,
6 a district court is free, in the exercise of its sound discretion, to
7 accept the moving party's facts as stated." Caban Hernandez, 486 F.3d
8 at 7. See also, Cosme-Rosado v. Serrano-Rodríguez, 360 F.3d 42 (1st
9 Cir. 2004) ("uncontested" facts pleaded by movant deemed admitted due
10 to respondent's failure to properly submit statement of contested
11 facts). "[A]bsent such rules, summary judgment practice could too
12 easily become a game of cat-and-mouse, giving rise to the 'specter of
13 district court judges being unfairly sandbagged by unadvertised
14 factual issues.'" Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir.
15 2000) (citing Stepanischen v. Merchants Despatch Transp. Corp., 722
16 F.2d 922, 931 (1st Cir. 1983)).

17 **IV. THE FACTS**

18 Plaintiffs having failed to controvert any of the facts
19 adequately proffered in defendants' Statement of Uncontroverted
20 Material Facts (docket No. 91), we find the following material facts
21 uncontested.

22 Codefendant GREGORIO FELICIANO CASTILLO was the 7th grade
23 mathematics teacher at the "20 de Septiembre de 1988" Intermediate
24 School in Vieques, Puerto Rico, during the 2003-2004 school year.
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2 On January of 2004, plaintiff ROBERT ALMODOVAR HOWARD was
3 enrolled by his parents in the "20 de Septiembre de 1988" School.
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5 On March 31, 2004, the Grades Report for the second cycle were
6 issued. Plaintiff ROBERT ALMODOVAR HOWARD received a "C" in his
7 mathematics class. This report was signed by FERDINAND ALMODOVAR, the
8 minor's father.

9 The following day, on April 1, 2004, FERDINAND ALMODOVAR sent a
10 letter to DR. CESAR A. REY-HERNANDEZ, former Secretary of Education
11 and other officials of the DOE. In this letter, MR. ALMODOVAR alleged
12 that his son had been the victim of discrimination on the part of
13 GREGORIO FELICIANO for being of Caucasian descent and for having
14 white skin and blond hair. MR. ALMODOVAR went on to state that the
15 reason why his son received a "C" grade in his Mathematics class was
16 because of MR. FELICIANO's prejudice.

17 On May 13, 2004, ROBERT ALMODOVAR HOWARD was given a Basic
18 Mathematics Skills test by ANA DEL PILAR LOPEZ-DIAZ. This test was
19 not graded by GREGORIO FELICIANO, but by another math teacher. The
20 resulting score was a 63 out of 96 for a score of 66%.

21 As a result of FERDINAND ALMODOVAR's April 1, 2004 letter, the
22 DOE commenced an investigation of the allegations charged therein.

23 On or about May 13, 2004, MERELYS RAMOS, a DOE investigator, met
24 with some students and faculty of the "20 de Septiembre de 1988"
25 School to inquire about the facts alleged in MR. ALMODOVAR's
26 administrative complaint.

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3 During the semester that ROBERT ALMODOVAR HOWARD attended the
4 "20 de Septiembre de 1988" School, all the complaints made by MR.
5 ALMODOVAR regarding his son were related to an alleged racial
6 discrimination on the part of GREGORIO FELICIANO. None made reference
7 to the DOE failing to provide the minor with any Special Education
8 services.

9 On August 4, 2004, the DOE notified GREGORIO FELICIANO of his
10 right to an Informal Administrative Hearing for him to show cause why
11 he should not be subjected to suspension from work and pay or to
12 dismissal of his duties at the DOE as a result of the charges filed
13 by MR. ALMODOVAR.

14 On August 5, 2004, GREGORIO FELICIANO started working at the
15 "Centro de Orientacion Vocacional y Educativa Integrado a la
16 Comunidad" ("COVEICO") where he had been reassigned by the DOE.

17 On August 6, 2004, the day plaintiffs allege that MR. FELICIANO
18 approached the "20 de Septiembre de 1988" School with the intention
19 of harassing and intimidating ROBERT ALMODOVAR HOWARD, he was merely
20 walking to the School Superintendence in Vieques in order to meet
21 with Superintendent EVA L. TORRES to receive instructions regarding
22 his duties in his new position as he was ordered to do by MR. NILO
23 ADAMS COLON. In order to get from "COVEICO" to the Vieques
24 Superintendence, MR. FELICIANO had to, per force, pass in front of
25 the "20 de Septiembre de 1988" School.

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2 On April 28, 2005, plaintiffs filed a complaint in the Court of
3 First Instance of Fajardo, Puerto Rico, against GREGORIO FELICIANO,
4 the COMMONWEALTH and the DOE alleging violations under "the Federal
5 Civil Rights Act and the applicable local provisions."

6 On October 13, 2005, plaintiffs filed a Motion for Voluntary
7 Dismissal without Prejudice in the aforementioned case which was
8 granted on October 31, 2005.

9 This suit was filed on September 1, 2005.

10 ROBERT ALMODOVAR HOWARD is no longer enrolled in a Puerto Rico
11 school. He was registered by his parents in a school in Connecticut.

12 **v. 42 U.S.C. § 1981**

13 **A. APPLICABLE STATUTE OF LIMITATIONS**

14 The applicable statute of limitations for a § 1981 cause of
15 action will vary depending on the type of conduct challenged in the
16 pleadings. Because § 1981 does not contain a limitations provision,
17 federal courts would normally apply "the most appropriate or
18 analogous state statute of limitations." Jones v. R.R. Donnelley &
19 Sons Co., 541 U.S. 369, 371, 124 S.Ct. 1836, 158 L.Ed.2d 645 (2004).
20 However, in December 1990 Congress passed into law 28 U.S.C. § 1658,
21 a general 4-year statute of limitations provision for claims arising
22 under federal statutes enacted after December 1, 1990.

23 Sec. 1658(a) provides "[e]xcept as otherwise provided by law, a
24 civil action arising under an Act of Congress enacted after the date
25

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2 of the enactment of this section [December 1, 1990] may not be
3 commenced later than 4 years after the cause of action accrues."

4 It appearing that § 1981 was amended by the Civil Rights Act of
5 1991, 105 Stat. 1071, that is, subsequent to the enactment of the new
6 limitations provision, we must decide whether the claims asserted in
7 the complaint are subject to Puerto Rico's personal injury
8 limitations period or § 1658.

9 The original version of § 1981 reads as follows:

10 All persons within the jurisdiction of the United
11 States shall have the same right in every State and
12 Territory to make and enforce contracts, to sue, be
13 parties, give evidence and to the full and equal benefit of
14 all laws and proceedings for the security of persons and
15 property as is enjoyed by white citizens...

16 The Supreme Court has interpreted the phrase "to make...
17 contracts" contained in the pre-1991 version of § 1981 as protection
18 "only to the formation of a contract, but not to problems that may
19 arise later... to conduct... after the contract relation has been
20 established including breach of the terms of the contract... Such
21 post formation conduct does not involve the right to make a contract,
22 but rather implicates the performance of established contract
23 obligations...." Patterson v. McLean Credit Union, 491 U.S. 164, 176-
24 77, 109 S.Ct. 2363, 105 L.Ed.2d 132. The phrase to "enforce
25 contracts" in the same statute was limited to "protection of a legal
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2 process, and of a right of access to legal process, that will address
3 and resolve contract-law claims without regard to race. In this
4 respect, it prohibits discrimination that infects the legal process
5 in ways that prevent one from enforcing contract rights, by reason of
6 his or her race." Patterson, 491 U.S. at 177.

7 The Supreme Court concluded that "a cause of action arises under
8 an Act of Congress enacted after December 1, 1990 - and therefore is
9 governed by § 1658's 4-year statute of limitations - if the
10 plaintiff's claim against the defendant was made possible by a post-
11 1990 enactment." Jones, 541 U.S. at 382 (internal brackets and
12 quotation marks omitted).

13 In this case, plaintiffs allege that the minor was subjected to
14 harassment by his math teacher because of his race to the point where
15 he was given a "C" grade when he deserved an "A" grade. This
16 particular conduct was not covered under the pre-1991 version of
17 § 1981. See, Patterson, 491 U.S. at 179 (although "reprehensible...
18 [racial harassment] is not actionable under § 1981, which covers only
19 conduct at the initial formation of the contract and conduct which
20 impairs the right to enforce contract obligations through legal
21 process." Rather, it was made possible as a result of the Civil
22 Rights Act of 1991 whereby § 1981 was amended to include a broader
23 definition of its provisions which now includes post contract
24 harassment.² See i.e., CBOS West, Inc. v. Humphries, ____ U.S. ___, 128

26 ² The following provision was added to § 1981:

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2 S.Ct. 1951 (2008); (retaliation claims actionable under amended
3 version of § 1981); Jones, 541 U.S. at 383 (1991 amendment extended
4 coverage to "hostile work environment, wrongful termination, and
5 failure to transfer claims").

6 Based on the foregoing, the § 1981 claims asserted in this
7 action are subject to the four-year limitations period established in
8 § 1658.

9 Defendants contend that the § 1981 claims accrued on or about
10 **April 1, 2004**. Assuming this argument to be true, the complaint filed
11 in this forum on **September 1, 2005**, falls within the four-year
12 applicable term.

13 Accordingly, defendants' request to dismiss the § 1981 claim as
14 untimely is **DENIED**.

15 **B. PARENT'S STANDING**

16 Constitutional deprivation suits must be brought by the
17 individuals affected by the particular acts or omissions under
18 attack. Núñez González v. Vázquez Garced, 389 F.Supp.2d 214 (D.P.R.
19 2005); Reyes Vargas v. Roselló González, 135 F.Supp.2d 305, 308
20 (D.P.R. 2001). In this vein, it has been held that relatives may not

22 (b) "Make and enforce contracts" defined

23 For purposes of this section, the term
24 "make and enforce contracts" includes the
25 making, performance, modification, and
26 termination of contracts, and the enjoyment of
all benefits, privileges, terms, and conditions
of the contractual relationship.

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2 assert claims for the death of a family member as a result of
3 unconstitutional conduct unless the challenged action is directed at
4 their family relationship. Robles-Vázquez v. Tirado-Garcia, 110 F.3d
5 204, 206 n.4 (1st Cir. 1997); Núñez González; Reyes Vargas.
6

7 In this particular case, the parents of ROBERT ALMODOVAR HOWARD
8 did not personally suffer any constitutional deprivation as a result
9 of the acts and/or omissions alleged in the complaint for which
10 reason they may not assert individual § 1981 claims. Accordingly,
11 they have no standing to assert constitutional claims in these
12 proceedings; they may only act in a representative capacity on behalf
13 of their minor son.

14 Accordingly, the § 1981 claims asserted by MR. and MRS.
15 ALMODOVAR in their individual capacities are hereby **DISMISSED** for
16 lack of standing.

17 **C. MONETARY DAMAGES AGAINST THE COMMONWEALTH
THE DOE, AND DEFENDANTS IN THEIR OFFICIAL CAPACITY
ARE BARRED BY THE ELEVENTH AMENDMENT**

18 The Eleventh Amendment to the United States Constitution³ bars
19 the commencement and prosecution in federal court of suits claiming
20 damages brought against any state, including Puerto Rico, without its
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22 ³ The Eleventh Amendment provides:

23 The judicial power of the United States
24 shall not be construed to extend to any suit in
25 law or equity, commenced or prosecuted against
26 one of the United States by Citizens of another
State, or by Citizens or Subjects of any Foreign
State.

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2 consent. Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico
3 and Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56, 61 (1st Cir.
4 2003); Futura Dev. v. Estado Libre Asociado, 144 F.3d 7, 12-13 (1st
5 Cir. 1998); In re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d
6 940, 942 (1st Cir. 1989); Ramírez v. P.R. Fire Serv., 715 F.2d 694,
7 697 (1st Cir. 1983); Fernández v. Chardón, 681 F.2d 42, 59 n.13 (1st
8 Cir. 1982).

9 Plaintiffs having failed to contest defendants' allegations, we
10 deem the DOE to be an arm of the state and consequently, also immune
11 from suit in the federal courts by virtue of the Eleventh Amendment.
12 See, Diaz-Fonseca, 451 F.3d at 34 ("This court has assumed without
13 discussion that the DOE's Eleventh Amendment immunity is coextensive
14 with that of the Commonwealth's") and cases cited therein.

15 Additionally, suits filed against government officials in their
16 official capacity are deemed actions against the state since the real
17 party in interest is the government and not the official. Pennhurst
18 State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101-102, 104 S.Ct. 900,
19 908-909, 79 L.Ed.2d 67, 79 (1984). See, Hafer v. Melo, 502 U.S. 21,
20 112 S.Ct. 358, 116 L.Ed.2d 301 (1991) (Eleventh Amendment immunity
21 applies even in those cases where the state has not been nominally
22 included in the suit); Will v. Mich. Dep't of State Police, 491 U.S.
23 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) (suits against officers in
24 their official capacity for damages are tantamount to actions
25 directly against the state).

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2 Eleventh Amendment immunity has been extended to suits filed
3 under the provisions of § 1981. Bakhtiari v. Lutz, 507 F.3d 1132,
4 1138 (8th Cir. 2007); Keri v. Bd. of Trustees of Purdue Univ., 458
5 F.3d 620, 641 (7th Cir. 2006); Singletary v. Missouri Dep't of Educ.,
6 423 F.3d 886, 891 (8th Cir. 2005); Bland v. New York, 263 F.Supp.2d
7 526, 534 (E.D.N.Y. 2003); Silva v. U.P.R., 817 F.Supp. 1000, 1005
8 (D.P.R. 1993).

9 Accordingly, we find that the COMMONWEALTH, the DOE and their
10 respective commanding authorities named in their official capacity
11 are immune from liability under 42 U.S.C. § 1981 in this case
12 pursuant to the Eleventh Amendment.⁴ Bakhtiari, 507 F.3d at 1138.

13 However, this doctrine does not shield codefendant FELICIANO
14 from damages in his personal capacity. See, Redondo-Borges v. U.S.
15 Dep't of Housing and Urban Dev., 421 F.3d 1, 7 (1st Cir. 2005)
16 (Eleventh Amendment does not "bar relief (whether in the form of
17 money damages or an injunction) against the commonwealth defendants
18 in their individual capacities.") See also, Bakhriari, 507 F.3d at
19 1138 ("failure to name... parties in their individual capacities
20 invalidates [plaintiff's] remaining claims for relief under section[]
21 1981").

22
23
24 ⁴ It appearing that no equitable relief against the local
25 government or its employees in their official capacity is viable in
26 this case inasmuch as the minor plaintiff has left the local school
system and it further appearing that no monetary relief is available
against these defendants under § 1981, no remedy can be afforded
plaintiffs against these defendants under this provision.

2 VI. TITLE VI & ART. 1802 NEGLIGENCE CLAIMS3 **A. LIMITATIONS PERIOD**

4 Because Title VI does not provide for a limitations period, the
5 courts borrow the most analogous state provision applicable to
6 personal injury actions. Stanley v. Trustees of Cal. St. Univ., 433
7 F.3d 1129, 1134 (9th Cir. 2006); Curto v. Edmundson, 392 F.3d 502, 504
8 (2nd Cir. 2004); Burton v. Belle Glade, 178 F.3d 1175, 1204 n.32 (11th
9 Cir. 1999); Skidmore v. American Airlines Inc., 198 F.Supp. 131, 135
10 (D.P.R. 2002).

11 The Puerto Rico Civil Code provides for a one-year statute of
12 limitations in actions sounding in tort. P.R. Laws Ann. tit., 28 §
13 5898(2) (1990). The limitations period will commence to run not
14 necessarily from the moment claimant first learns the identity of his
15 tortfeasor, i.e., "'actual knowledge'" but rather from the time when
16 "'by due diligence, such knowledge would likely have been acquired.'"
17 Torres v. E.I. Nemours, 219 F.2d at 13 (citing Villarini-Garcia v.
18 Hosp. del Maestro, Inc., 8 F.3d 81, 84 (1st Cir. 1993)).

19 Although the local provisions are utilized for determining the
20 length of the statute of limitations period federal law governs the
21 date when the limitations period begins to run. See, Rivera Ramos v.
22 Roman, 156 F.3d 276, 282 (1st Cir. 1998) (discussing § 1983 cause of
23 action). Further, the accrual period will ordinarily commence "'when
24 the plaintiff knows, or has reason to know, of the injury on which
25 the action is based.'" Carreras-Rosa v. Alves-Cruz, 127 F.3d 172, 174
26

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2 (1st Cir. 1997) (citing Rivera-Muriente v. Agosto-Alicea, 959 F.2d
3 349, 353 (1st Cir. 1992)).

4 By way of an exception to the one year limitations period,
5 minors are not required to institute suits while under legal age.
6 Cintrón v. E.L.A., 127 D.P.R. 582, 589 n.2 (1990). Pursuant to art.
7 40 of the Puerto Rico Code of Civil Procedure, P.R. Laws Ann. tit.
8 32, § 254(a) (2004), the one year statutory period "is tolled until
9 a plaintiff's twenty-first birthday in the event that the plaintiff
10 is a minor at the time the action is filed." Aybar v. Crispín-Reyes,
11 118 F.3d 10, 15 n.6 (1st Cir. 1997). See also, Cruz Vargas v. R.J.
12 Reynolds Tobacco Co., 218 F.Supp.2d 109, 114 (D.P.R. 2002)
13 ("[plaintiff's] claims... not time-barred because he is a minor and
14 the statute of limitations is tolled until he reaches the age of
15 majority"); Ocasio-Berrios v. Bristol Myers Squibb Caribbean Corp.,
16 73 F.Supp.2d 171, 174 (D.P.R. 1999) ("In Puerto Rico, statutes of
17 limitations do not run against minors until they reach the legal age
18 of 21.")

19 Plaintiff ROBERT ALMODOVAR HOWARD was still a minor when the
20 complaint was filed in this forum on September 1, 2005. Accordingly,
21 the minor's claims against GREGORIO FELICIANO based on Title VI as
22 well as the Puerto Rico negligence provisions are timely.

23 We must now determine whether his parent's causes of action
24 under these two legal provisions were timely filed.

25

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2 Pursuant to § 5303, the one-year term may be tolled by (1)
3 instituting judicial proceedings, (2) submitting extra-judicial
4 claims or (3) acknowledgment of the obligation by the person liable
5 for the damages. Once tolled, the period starts to run anew. De Leon
6 v. Caparra Center, 147 D.P.R. 797, 803 (1999).

7 The onus of proving interruption of the limitations period falls
8 upon the plaintiff. Tokyo Marine & Fire Ins. Co., Ltd. v. Perel &
9 Cia., 142 F.3d 4 (1st Cir. 1998). Thus, it is plaintiff's burden to
10 establish the adequacy of an extra-judicial claim which complies with
11 the pertinent legal requirements. Gonzalez Rodriguez v. Wal-Mart,
12 Inc., 147 D.P.R. 215, 218 (1998). See also, Acosta Quiñones v. Matos
13 Rodriguez, 135 D.P.R. 668, 675 (1994) (It behooves claimant to prove
14 the extra-judicial claim by direct or circumstantial evidence).

15 In order for extra-judicial claims to effectively toll the
16 statutory period the demand must be made by the injured party or his
17 representative to the person responsible for the damages, prior to
18 the lapse of the statutory period and must relate to the same cause
19 of action alleged in the complaint. De Leon, 147 D.P.R. at 810;
20 Gonzalez Rodriguez, 147 D.P.R. at 218. That is, "it must require or
21 demand the same conduct or relief ultimately sought in the subsequent
22 lawsuit." Tokyo Marine, 142 F.3d at 5 (citing Rodriguez Narvaez v.
23 Nazario, 895 F.2d 38, 44 (1st Cir. 1990)) (emphasis ours).

24 As defendants correctly point out, plaintiffs were aware of the
25 alleged discriminatory conduct on the part of the math teacher as
26

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2 well as of the challenged poor grade by March 31, 2004, when the
3 report card was issued. As a matter of fact, the following day, April
4 1, 2004, the minor's father wrote to the then Secretary of Education
5 complaining of the discriminatory situation.

6 This April 1, 2004 letter, however, does not comply with the
7 requisites of § 5303 for extrajudicial claims regarding GREGORIO
8 FELICIANO individually. For starters, the letter is not addressed to
9 codefendant neither is there evidence that he was privy to the
10 communication. Further, the relief sought therein has no bearing on
11 the damages claims asserted against him under art. 1802 in these
12 proceedings. No monetary demand is specifically made upon MR.
13 FELICIANO.

14 The fact that plaintiffs sought, on May 18, 2004, and were able
15 to procure on July 22, 2004, a Protective Order from the Municipal
16 Judge in Vieques due to the harassment pattern shown by GREGORIO
17 FELICIANO cannot possibly affect the limitations period either. No
18 economic relief was requested via the judicial proceedings; only
19 protection from the teacher.

20 Because the Title VI and negligence causes of action accrued on
21 or about April 1, 2004, and no tolling was effected vis a vis
22 GREGORIO FELICIANO until he was named as a party defendant in the
23 local proceedings on April 28, 2005, which occurred beyond the one-
24 year statutory period, the parents' claims against GREGORIO FELICIANO
25

26

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2 in his individual capacity asserted pursuant to Title VI and art.
3 1802 are time-barred.
4

5 **B. FAILURE TO STATE A CLAIM**

6 Defendants further contend that plaintiffs have failed to state
7 a claim under Title VI of the Civil Rights Act which provides:
8

9 No person in the United States shall, on the ground of
10 race, color or national origin, be excluded from
11 participation in, be denied the benefits of, or be
12 subjected to discrimination under any program or activity
13 receiving Federal financial assistance.
14

15 42 U.S.C. § 2000d.

16 Title VI prohibits only intentional discrimination of persons
17 participating in a program or activity receiving federal financial
18 assistance. Alexander v. Sandoval, 532 U.S. 275, 280, 212 S.Ct. 1511,
19 149 L.Ed.2d 517 (2001); Jackson v. Katy Independent Sch. Dist., 951
20 F.Supp. 1293, 1298 (S.D. Tex. 1996).

21 Title VI and Title IX, 20 U.S.C. § 1681 have been interpreted in
22 *pari materia*. See, Barnes v. Gorman, 536 U.S. 181, 185, 122 S.Ct.
23 2097, 153 L.Ed.2d 230 (2002) ("Court has interpreted Title IX
24 consistently with Title VI"); Cannon v. Univ. of Chicago, 441 U.S.
25 677, 696, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979) ("The drafters of
26 Title IX explicitly assumed that it would be interpreted and applied
as Title VI had been during the preceding eight years"); Steel v.
Alma Public Sch. Dist., 162 F.Supp.2d 1083, 1085 (W.D.Ark. 2001)

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3 (Title IX and Title VI are parallel to each other and operate in the
4 same manner"); Mock v. South Dakota Bd. of Regents, 267 F.Supp. 1017,
5 1019 (D.S.D. 2003) ("Title VI and Title IX may be used
6 interchangeably in analyzing similar issues under both titles.")

7 Relief available under Title VI is limited to compensatory
8 damages and injunctive relief. No punitive damages are allowed.
9 Barnes, 536 U.S. at 187.

10 Defendants argue that there is no evidence that codefendant, the
11 DOE, as an institution, intentionally discriminated against ROBERT
12 ALMODOVAR HOWARD. They allege that upon receiving the April 1, 2004
13 letter, the DOE promptly assigned an investigator who interviewed
14 students, parents and officials from the "20 de Septiembre de 1988"
15 School on or about May 13, 2004. As a result thereof, a letter was
16 issued to GREGORIO FELICIANO on August 4, 2004, for him to show cause
17 why sanctions should not be imposed for his improper conduct. MR.
18 FELICIANO was transferred to another school effective August 5, 2004.

19 However, the DOE may be found liable if notice was given to one
20 of its officials who was capable of taking the necessary action to
21 end the discriminatory conduct. "[D]amages remedy will not lie under
22 [Title VI] unless an official who at a minimum has authority to
23 address the alleged discrimination and to institute corrective
24 measures on the recipient's behalf has actual knowledge of
25 discrimination in the recipient's programs and fails adequately to

26

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3 respond." Gebster v. Lago Vista Sch. Dist., 524 U.S. 274, 290, 118
4 S.Ct. 1989, 141 L.Ed.2d 277 (1998) (discussing Title IX).5 There is evidence in the record that plaintiffs complained to
6 the school principal regarding the teacher's intolerable behavior
7 which grievances went unanswered.⁵ Accordingly, summary judgment is
8 not warranted at this stage of the proceedings on this particular
9 issue.10 Accordingly, we find that the minor plaintiff may proceed to
11 prosecute the Title VI claims with respect to the COMMONWEALTH, the
12 DOE and the defendants in their official capacity.13 It appearing that school officials are not individually liable
14 for Title VI violations. Steel, 162 F.Supp.2d at 1085; Jackson v.
15 Katy Independent Sch. Dist., 951 F.Supp. 1293, 1298 (S.D. Tex. 1996)
16 the Title VI claims asserted against GREGORIO FELICIANO in his
17 individual capacity are hereby **DISMISSED**.18 **VII. IDEA - LIMITATIONS PERIOD**19 Defendants claim that the IDEA claims asserted in these
20 proceedings should be dismissed as untimely. MR. and MRS. ALMODOVAR
21 allege that they effectively tolled the limitations period and that
22 the minor's cause of action does not prescribe until he reaches
23 majority of age. Before delving into the limitations issue we must
24 first ascertain which of the named plaintiffs has adduced an IDEA
25 cause of action in this case.26

⁵ ANA DEL PILAR LOPEZ Depo. Tr. 88.

3 ROBERT ALMODOVAR HOWARD is no longer registered as a student
4 with the DOE nor is there any evidence on record that equitable
5 relief is warranted in these proceedings. Further, as previously
6 ruled in our Order in the Matter of Defendants' Partial Motion to
7 Dismiss (docket No. 46), IDEA does not allow compensation for
8 emotional suffering or punitive damages. Rather, relief under this
9 statute is limited to reimbursement of those expenses warranted by
10 defendants' dereliction of their obligations under IDEA to provide
11 the minor an appropriate free and public education which, in this
12 case, are the pecuniary losses allegedly incurred by the parents in
13 having to send him to school in Connecticut.

14 We find that in this case the IDEA cause of action for
15 reimbursement of costs associated with the new school belongs to the
16 parents, not the child. *See, i.e., Frank G. v. Bd. of Educ. of Hyde*
17 *Park*, 459 F.3d 356, 364 ("If a state fails in its obligation to
18 provide a free appropriate public education to a handicapped child
19 the parents may enroll the child in a private school and seek
20 retroactive reimbursement for the cost of the private school from the
21 state."); *L.B. ex rel. K.B. v. Nebo. Sch. Dist.*, 379 F.3d 966, 978
22 (10th Cir. 2004) ("[Minor's] parents are entitled to reimbursement for
23 the reasonable cost of the services provided to [the minor], in
24 support of her mainstream preschool education."); *Lamoneine Sch. Comm.*
25 *v. Ms. Z. ex. rel. N.S.*, 353 F.Supp.2d 18, 32 (D.Me. 2005)
26 ("[P]arents are entitled to reimbursement only if a federal court

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2 concludes both that the public placement violated IDEA and that the
3 private school placement was proper under the Act.") (citation and
4 internal quotation marks omitted, italics in original).

5 It is uncontested that MR. and MRS. ALMODOVAR, ROBERT's parents,
6 were the ones who incurred in the alleged expenses associated with
7 his relocation. Thus, it is they who are entitled to reimbursement of
8 the monies allegedly expended. Accordingly, based on the facts of
9 this case, their son has no viable IDEA claims because there is no
10 relief that may be granted to him in this action under this
11 particular statute.

12 Like some of the other federal claims asserted in this action
13 IDEA does not provide for a statute of limitations. Consequently, the
14 courts follow a similar pattern and borrow from the state's most
15 analogous limitations period. Nieves-Marquez v. The Commonwealth of
16 P.R., 353 F.3d 108, 118 (1st Cir. 2003); M.D. v. Southington Bd. Of
17 Educ., 334 F.3d 217, 221-22 (2nd Cir. 2003); Murphy v. Timberlane
18 Regional Sch. Dist., 22 F.3d 1186, 1190 (1st Cir. 1994); Sanders v.
19 Santa Fe. Public Sch., 383 F.Supp.2d 1305, 1311 (D.N.M. 2004).

20 We find that the one-year local limitations period applicable to
21 personal injury actions is the appropriate term for the IDEA claims
22 filed in these proceedings. See i.e., Murphy, 22 F.3d at 1194
23 (applying statute of limitations for personal injury suits). Accrual
24 of an IDEA claim, however, is governed by federal law. "The general
25 rule under federal law is said to be that IDEA claims accrue when the
26

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2 parents know or have reason to know of the injury or event that is
3 the basis for their claim." Murphy, 22 F.3d at 1194 (citations,
4 internal quotation marks and brackets omitted).

5 As previously noted, there can be no doubt that at least by
6 April 1, 2004, ROBERT ALMODOVAR HOWARD's parents were fully aware of
7 the alleged IDEA violations, i.e., failure to provide their minor son
8 with an adequate individualized education program.

9 For purposes of tolling the limitations period, the only steps
10 taken by them subsequent to March 31, 2004, were an April 1, 2004
11 letter addressed to the DOE complaining exclusively of the
12 discriminatory racial harassment ROBERT ALMODOVAR HOWARD had been
13 subjected to by his mathematics teacher⁶ and a Notice of Intent to Sue
14 forwarded to the Attorney General on October 13, 2004, which made no
15 mention of any IDEA-related claims. Accordingly, pursuant to the
16 uncontested evidence submitted in this case at no time were
17 defendants put on notice regarding any possible IDEA violations until
18 the instant complaint was filed which, for the first time, adduced
19 such claims.⁷

20
21
22
23
24 ⁶ The letter specifically identified its subject matter as: "RE:
25 Discrimination against student Robert Almodovar Howard."

26 ⁷ As a matter of fact, not even the local complaint filed on
April 28, 2005 - outside the one-year limitations period - mentioned
any of the IDEA provisions.

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2 Based on the foregoing, we find that only ROBERT ALMODOVAR
3 HOWARD's parents have a cause of action under IDEA under the facts as
4 presented in this case but that the same is time-barred.
5

6 Accordingly, the IDEA cause of action asserted in the complaint
7 is hereby **DISMISSED**.⁸

8

9 **VIII. CONCLUSION**

10 Based on the foregoing, defendant's Motion for Summary Judgment
11 (docket No. **91**)⁹ is disposed of as follows:

12 - The § 1981 claims asserted against the COMMONWEALTH, the
13 DOE and defendants in their official capacity are barred
14 under the Eleventh Amendment.

15 - MR. and MRS. ALMODOVAR have no standing to bring a § 1981
16 suit.

17 - The § 1981 claims asserted by ROBERT ALMODOVAR HOWARD
18 against GREGORIO FELICIANO in his individual capacity are
19 not barred by the statute of limitations pursuant to 28
20 U.S.C. § 1658.

21

22 ⁸ Given our ruling, there is no need to address defendants' argument that no IDEA claim was possible because ROBERT ALMODOVAR HOWARD was never registered with the DOE's Orientation and Continuous Registration Centers or with the Office of the Superintendence of Schools.

23 ⁹ See Opposition (docket No. **99**); Reply (docket No. **103**) and
24 Answer to Defendants' Reply (docket No. **109**).

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2 - The Title VI and art. 1802 negligence claims asserted by
3 MR. and MRS. ALMODOVAR against GREGORIO FELICIANO
4 individually are time-barred.

5 - The minor plaintiff may proceed to prosecute the Title VI
6 claims with respect to the COMMONWEALTH, the DOE and the
7 defendants in their official capacity.

8 - The minor plaintiff may proceed to prosecute the art. 1802
9 negligence claims against GREGORIO FELICIANO in his
10 individual capacity.

11 - The IDEA claims asserted in the complaint are hereby
12 **DISMISSED.**

13 IT IS SO ORDERED.

14 San Juan, Puerto Rico, this 8th day of August, 2008.

16 S/Raymond L. Acosta

17 RAYMOND L. ACOSTA

18 United States District Judge